

DEC-29-1998 18:03

WKH

P.01

12-29-98 5:35 PM

To: Gary Melius

From: Watter Hon

(FILE) H. Rogers

4 pages

Miller

Schroeder

- Gary -

This is the revised agreement Miller-Schroeder wants to ~~be~~ have the Tribe sign. There are a couple of changes I want, but basically it looks OK. I'll be talking with them tomorrow. Any comments?

Watter



TOTAL P.01

ARC 07958

DEC-29-1998 18:10

WKH

P.01

### NOTICE AND ACKNOWLEDGMENT OF PLEDGE

**Recitals:**

- A. President R.C.—St. Regis Management Company ("PRC") and The St. Regis Mohawk Tribe, a federally recognized Indian tribe (the "Tribe") have entered into a Fourth Amended and Restated Management Agreement dated November 7, 1997 (the "Agreement").
- B. Under the Agreement, PRC, has, among other things, agreed to pay all of the "Development Expenses," as defined in Section 6.1(B) of the Agreement, of the "Facility," as defined in Section 1.12 of the Agreement, and such Development Expenses, with interest thereon at the rate described in Section 6.1(B), constitute a loan from PRC to the Tribe.
- C. That loan is to be repaid by the Tribe to PRC in monthly payments consisting of a "Monthly Base Payment," as defined in Section 1.21 of the Agreement, and an additional payment of \$500,000, as described in Section 8.10(C) of the Agreement (the "Repayment Amounts"). As provided in Section 10.7 of the Agreement, the obligation of the Tribe to pay the Repayment Amounts shall survive any termination of the Agreement for cause until the total Development Expenses, with interest, have been repaid by the Tribe to PRC.
- D. PRC and Miller & Schroeder Investments Corporation ("M&S") have entered into a loan agreement pursuant to which M&S will lend money (the "Loan") to PRC in order to finance a portion of the Development Expenses. As security for the repayment of the Loan, with interest, PRC has pledged to M&S the Repayment Amounts and all other amounts payable by the Tribe to PRC under the Agreement (the "Management Fees;" the Repayment Amounts and the Management Fees are collectively referred to herein as the "Agreement Payments").
- E. In furtherance of that pledge, PRC desires that the Tribe make all Agreement Payments that are owed to PRC in the manner described in this Notice and Acknowledgment.

**Acknowledgments and Agreements:**

1. The Loan is an obligation of PRC, not the Tribe.
2. The Tribe acknowledges that PRC has pledged its interest in the Agreement Payments to M&S as security for the repayment of the Loan. Upon notice to the Tribe, jointly given by PRC and M&S, Tribe agrees that the Agreement Payments will be paid by Tribe, or on its behalf, to an escrow account established with a state or national bank and designated by PRC and M&S.

RECEIVED TIME DEC. 1:14PM

PRINT TIME DEC.29. 1:16PM

ARC 07959

DEC-29-1998 18:11

WKH

P.02

3. As of the date of this Notice and Acknowledgment, the Monthly Base Payment is \$276,118.15, and the total monthly Repayment Amount payable by the Tribe to PRC in repayment of the Development Expenses is \$776,118.15.

4. The Tribe acknowledges that its obligation to pay the Repayment Amounts survives any termination of the Agreement as set forth in Section 10.7 of the Agreement and that M&S is lending money to PRC in reliance upon Tribe's continuing obligation to pay the Repayment Amounts. The Tribe agrees that it will pay all Repayment Amounts due to PRC [or M&S] as applicable, without any set-off or deduction whatsoever notwithstanding any prior termination of the Agreement, or any defense, set-off, counterclaim or recoupment arising out of any claim against PRC or M&S, until all Development Expenses, with interest at the rate provided in Section 6.1(B) of the Agreement, have been fully repaid.

5. The Tribe further agrees that M&S has not assumed any duties under the Agreement or made any warranties whatsoever as to the Agreement. The Tribe agrees not to make any change to the Agreement affecting any section of the Agreement relating to the Repayment Amounts without the prior written consent of M&S.

6. The Tribe warrants that its representations and warranties under the Agreement are true and correct on the date hereof.

7. The Tribe agrees that M&S shall be entitled to the benefits of and to enforce the agreements of Tribe under the Agreement relating to the payment of the Repayment Amounts to the same extent as PRC.

8. The Tribe, PRC and M&S hereby covenant and agree that they each may sue or be sued to enforce or interpret the terms, covenants and conditions of this Notice and Acknowledgment or to enforce the obligations or rights of the parties hereto in accordance with the following terms and conditions:

(A) Any action with regard to a controversy, disagreement or dispute between the Tribe, PRC or M&S arising under this Notice and Acknowledgment shall be brought before the appropriate United States District Court. In the event such federal court should determine that it lacks subject matter jurisdiction over any such action, such action shall be brought before the appropriate state court.

(B) The Tribe hereby expressly waives any right to proceed before any tribal court or authority of Tribe and further expressly waives any right which it may possess to require PRC or M&S to exhaust tribal remedies prior to bringing an action in federal court or state court as provided above.

(C) The Tribe hereby specifically and expressly waives its sovereign immunity from suit to the extent necessary to allow PRC or M&S to bring any action at law or in equity

-2-

RECEIVED TIME DEC. 1:14PM

PRINT TIME DEC.29. 1:16PM

ARC 07960

DEC-29-1998 18:11

WKH

P.03

to enforce or interpret the terms and conditions of this Agreement, including without limitation the right to obtain injunctive relief and/or monetary damages as determined by a court of competent jurisdiction. Nothing contained in this Notice and Acknowledgment shall be construed as waiving sovereign immunity in any suit for payment of damages from lands or funds held in trust for Tribe by the United States.

9. This Notice and Acknowledgment of Pledge shall constitute an agreement between the Tribe and M&S upon its execution and delivery to M&S.

DATE: \_\_\_\_\_

**PRESIDENT R.C.-ST. REGIS  
MANAGEMENT COMPANY**

BY: \_\_\_\_\_  
NAME: \_\_\_\_\_  
TITLE: \_\_\_\_\_

**THE ST. REGIS MOHAWK TRIBE**

BY: \_\_\_\_\_  
NAME: \_\_\_\_\_  
TITLE: \_\_\_\_\_

**MILLER & SCHROEDER INVESTMENTS  
CORPORATION**

BY: \_\_\_\_\_  
NAME: \_\_\_\_\_  
TITLE: \_\_\_\_\_

-3-

RECEIVED TIME DEC. 1:14PM

PRINT TIME DEC.29. 1:16PM

TOTAL P.03

ARC 07961